IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 457 OF 2007

Bira Appa Mane & ors .... Petitioner

versus

Kerba Bira Mane and ors ..... Respondent.

Shri R.S.Apte i/b A.R.Gole for the petitioner.

CORAM; A.P. DESHPANDE, J.
DATED; 4TH JULY, 2007

P.C.;

1. Rejection of an application for restoration of the appeal filed by the present petiitoners before the District Court,has given raise to filing of this writ petition.

2. The petitioners are the original defendants against whom a suit was filed by the respondent which came to be decreed. Aggreived thereby an appeal came to be filed. The said appeal came to be dismissed in default on 24-8-2004 and after the period of about 10 months an application was moved for restoration of the appeal, by contending that the applicant no.1 was looking after the case for and on behalf of the other appellants and that the applicant no.1 sufferd some injuries and being a disbetic patent, did not recover

from the said injuries within a reasonable period. The respondent opposed the application by contending that during the period for which the petiitoner no.1 claimed to be ill and indisposed, he had attended other cases and courts. Certified copy of the rozanama of Summary Criminal Case No. 653/02 was also placed on record of the appellate court. The petitioner no.1 has given certain admissions in his evidence and on that basis the first Appellate court has concluded that the petitioners have failed to establish sufficient cause for the delay in filing of the application. The court has held that even if the medical certificfate and the evidence of doctor who has treated the ilness is accepted, the explanation is for the period from 1-8-2004 to 15-10-2004. There is no explanation for the subsequent period from 16-10-2004 to 15-6-2005, which is a period of about 8 months. On account of the failure on the part of the petitioner,to establish that there is sufficient cause for the delay, the application has been rejected.

5. Perused the order, the court below has taken a possible view of the matter which does not require any interference in exercise of writ jurisdiction. Hence writ petition is summarily dismissed.

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